

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David J. Thomsen

Application No.: 10/806,044

Confirmation No.: 9996

Filed: March 22, 2004

Art Unit: 2161

For: SYSTEM AND METHOD FOR PROVIDING
OCCUPATIONAL INFORMATION

Examiner: C. L. Daye

Declaration of Mary Barros-Bailey Under 37 C.F.R. § 1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Mary Barros-Bailey, declare and state that:

1. That I am a rehabilitation Counselor and have been since 1990.
2. That on or about September 17, 2002 I attended a meeting at ERI Economic Research Institute ("ERI") headquarters in Redmond, Washington. This meeting was also attended by 3 representatives of the Social Security Administration and ERI staff. I signed that attached Nondisclosure Agreement (Exhibit #1) as part of attending that meeting.
3. The purpose of the meeting in Redmond, Washington was to review ERI's eDOT software and database. Both Social Security Administration and rehabilitation professionals such as myself were/are interested in updates to the Dictionary of Occupational Titles so that we will have more-current information to work with (the United States Department of Labor having announced in the 1990's that it would no longer update the Dictionary of Occupational Titles). We had heard that ERI was

working on such an update and came to Redmond to explain what we needed and to review what ERI was doing.

4. As part of the Redmond, Washington meeting, ERI staff demonstrated the eDOT software and database. The demonstration of the eDOT software included the following:

A website that allowed a user to access information associated with a collection of occupational titles. The website included data measures for each of the occupational titles in the collection.

The website allowed the user to contribute information using questionnaire forms accessible from the website, and to access the information recently contributed.

The demonstration included submitting questionnaires.

The information associated with the collection of occupational titles was updated based on a received questionnaire form by adding a new occupational title and associated data measures to the collection of occupational information

The information associated with the collection of occupational titles was updated based on another received questionnaire form by modifying data measures associated with an occupational title that already existed in the collection of occupational information.

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information or belief are believed to be true; and further, that the statements are made with the knowledge that the making of willful or false statements or the like is punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of any patent issuing from this patent application.

Dated this 20 day of October, 2008


Mary Barros-Bailey

Correspondence Address:

Customer No. 25096

Perkins Coie LLP

P.O. Box 1247

Seattle, Washington 98111-1247

(206) 359-8000

Exhibit 1

Nondisclosure Agreement

This Nondisclosure Agreement (the "Agreement"), effective as of 17 September 2002 (the "Effective Date"), between ERI Economic Research Institute, Inc. ("ERI"), having offices at 8575 - 164th Avenue NE, Suite 100, Redmond, WA 98052, and Alamy Partners, Inc. having offices at 2601 75th, Box 10, Foster ID 07727-1541, Foster, NJ ("Company"). *Vocational Services, Inc.*
Both ERI and Company are referred to herein individually as a "Party" and collectively as the "Parties." The Parties desire to enter into negotiations regarding the purchase or licensing of certain confidential and proprietary information of ERI ("Proposed Transaction") and this Agreement is entered into by the parties to protect ERI's confidential information.

1. **DEFINITION AND EXCLUSIONS.** "Confidential Information" shall mean any and all tangible or intangible information of or concerning ERI obtained by Company or to which Company has direct or indirect access, whether marked as confidential or not, in any form, format or media, including without limitation, information obtained from oral or other transitory means, unless expressly and specifically indicated at the time of disclosure to be non-confidential. Confidential Information shall include but is not limited to: (a) patentable subject matter and patent applications; (b) trade secrets; (c) the terms of any agreement between the Parties, except to the extent otherwise stated in such agreement; (d) any information that is marked confidential, restricted, proprietary, or with a similar designation or which under the circumstances surrounding disclosure ought to be treated as confidential; and (e) proprietary information of ERI such as protocols, system configurations, specifications, processes, methods, ideas, techniques, drawings, works of authorship, databases, inventions, know-how, software, algorithms and formulae related to the current, future, proposed products and services of ERI, research and development efforts or results, and marketing, customer and financial information (including finances, procurement, customer lists, investors, employees, third party relationships, forecasts and marketing plans). Notwithstanding the foregoing, Confidential Information shall exclude information that: (i) was lawfully in the public domain at the time of disclosure; (ii) lawfully becomes part of the public domain after disclosure through no fault of Company; (iii) was already in Company's possession free of any confidentiality obligation at the time of disclosure; (iv) was received after disclosure to Company from a third party who had a lawful right to disclose such information without any obligation to restrict its further use or disclosure; or (v) was developed by employees or agents of Company independently of and without exposure to any Confidential Information of ERI. All Confidential Information is provided "as is." ERI makes no warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of its Confidential Information.

2. **PURPOSE.** The Confidential Information is being disclosed in connection with discussions between the parties solely to assist Company in internally evaluating ERI's products or services and the Proposed Transaction.

3. **NATURE OF OBLIGATION AND LIMITED RIGHT TO USE.** Except as otherwise approved in writing, Company shall: (a) hold and maintain ERI's Confidential Information in strict confidence, exercising no less than the same degree of care that Company uses to protect its own similar categories of confidential and proprietary information, but no less than reasonable care; (b) not

disclose such Confidential Information to any third party; and (c) use the Confidential Information for no purpose other than that set forth in Section 2. Company shall only permit access to Confidential Information of ERI to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. Company shall immediately notify ERI upon discovery of any loss or unauthorized disclosure of the Confidential Information of ERI. Confidential Information may not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information shall remain the property of ERI and shall contain any and all confidential or proprietary notices or legends which appear on the original. Nothing herein shall be construed as granting any property, license or use rights to any Confidential Information, software, data or other materials of ERI, and Company shall not make or have made, market, use or sell any product or service using, incorporating, relying on, or derived from any such information. Company agrees that any software of ERI contains valuable Confidential Information and agrees not to modify, reverse engineer, decompile, create other works from, or disassemble any such software of ERI without the prior written consent of ERI. Company shall not communicate any information to ERI in violation of Company's confidentiality obligations to a third party, and shall not communicate any information to ERI in violation of the proprietary rights of any third party. Notwithstanding the above, Company may disclose Confidential Information as required in response to any valid court or governmental order or process, provided that Company provides prompt, prior written notice of such disclosure request and cooperates in any attempt to quash or avoid such notice or process.

4. **TERM.** The term of this Agreement shall commence upon the Effective Date and continue indefinitely thereafter. At any time, upon the written request of ERI, Company shall promptly return to ERI or destroy all documents and other tangible materials representing or embodying ERI's Confidential Information and all copies thereof, and shall immediately cease any further use thereof. Upon the written request of ERI, Company shall furnish a certificate executed by an officer of Company attesting to the complete return or destruction of Confidential Information of ERI.

5. **NO BUSINESS OBLIGATION.** Neither Party has any obligation under this Agreement to purchase any service or item from the other Party or to enter into any relationship in connection with the purpose set forth in Section 2. ERI has no obligation to disclose any Confidential Information

to Company, and may, at any time, in its sole discretion, cease giving Confidential Information to Company without any liability and request the return or destruction of any Confidential Information previously disclosed.

6. **ASSIGNMENT.** Neither Party may assign, transfer, delegate or sublicense any rights or obligations under this Agreement without the prior written consent of the other Party.

7. **NOTICES.** All notices required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth above or to such other address as either Party may specify in writing.

8. **IRREPARABLE HARM.** Company acknowledges that breach of this Agreement will cause irreparable harm to ERI and hereby agrees that ERI shall be entitled to seek injunctive relief under this Agreement for such breach or threatened breach, as well as such further relief as may be granted by a court of competent jurisdiction. Company may not raise any defense based on adequate remedy at law.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement on and as of the day and year first above written.

ERI ECONOMIC RESEARCH INSTITUTE, INC.:

By:

Mary Barrow-Bailey
Title: Bilingual Rehabilitation Counselor
Printed Name: Mary Barrow-Bailey

COMPANY:

By:

[Signature]
Title: KP Business Development
Printed Name: Michael S. Gillie

9. **GOVERNING LAW; JURISDICTION; VENUE.** This Agreement shall be governed by the internal laws of the state of Washington, without regard to its choice of law principles. The Parties hereby irrevocably consent to the sole and exclusive jurisdiction of and venue in the state and federal courts located in King County, Washington.

10. **FEES.** The prevailing Party in any action relative to this Agreement shall be entitled to recover its costs, including, without limitation, reasonable attorneys' fees.

11. **GENERAL.** This Agreement is the entire and complete Agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings between the Parties, whether written or oral, and may not be modified or amended in any way unless by means of written addendum, signed and dated by duly authorized representatives of both Parties. If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the Parties shall immediately begin negotiations to replace any invalid or unenforceable portions that are essential parts of this Agreement. If either Party fails to enforce any right or remedy hereunder, such failure shall not be deemed a waiver of such right or remedy.